

Introduced by Senator Wright

February 15, 2011

An act to amend Sections 7541 and 7570 of the Family Code, relating to paternity.

LEGISLATIVE COUNSEL'S DIGEST

SB 375, as introduced, Wright. Paternity.

Existing law establishes a presumption that a man is the natural father of a child if he and the natural mother of the child are married and the child is born during the marriage. Under existing law, this presumption of paternity may be rebutted by genetic evidence that another man is the biological father of the child. Existing law requires that a motion for genetic tests be filed not later than 2 years after the birth of the child.

This bill would authorize a presumed father to file a motion for genetic tests within a reasonable time after he becomes aware of facts that lead him to reasonably believe that he may not be the biological father of the child.

Existing law declares that there is a compelling state interest in determining paternity for all children.

This bill would instead declare that there is compelling state interest in determining biological paternity for all children, and would further declare that establishing paternity for biological fathers would increase respect for the judicial system.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Genetic testing, using DNA evidence, is recognized as
4 scientifically valid by the courts of this country.

5 (b) In the year 2000, the State of California recognized the
6 validity of DNA testing and created a procedure for an individual
7 convicted of certain crimes to petition a court to reopen his or her
8 case in order to reevaluate DNA evidence.

9 (c) A man who is adjudicated to be the father of a child by a
10 court in a paternity action when he is not actually the biological
11 father of the child may be financially liable for up to 18 years of
12 child support.

13 (d) The American Association of Blood Banks reported that out
14 of a total of more than 280,000 cases evaluated in 1999, almost
15 30 percent of the genetic samples excluded the tested individual
16 as the biological father.

17 (e) Thirty-seven states have more liberal and flexible statutes
18 than California and allow for paternity to be reevaluated using
19 DNA evidence.

20 (f) Data from the Department of Child Support Services shows
21 that judgments in more than 87 percent of cases challenging
22 paternity during a two-year period were established by default.

23 (g) Respect for the judicial system is greatly diminished when
24 the laws are inconsistent with regard to the use of scientifically
25 valid DNA testing and do not permit the correction of an injustice
26 in a paternity action, but do allow it in a criminal proceeding.

27 SEC. 2. Section 7541 of the Family Code is amended to read:

28 7541. (a) Notwithstanding Section 7540, if the court finds that
29 the conclusions of all the experts, as disclosed by the evidence
30 based on blood tests performed pursuant to Chapter 2 (commencing
31 with Section 7550), are that the husband is not the father of the
32 child, the question of paternity of the husband shall be resolved
33 accordingly.

34 (b) (1) The notice of motion for blood tests under this section
35 may be filed not later than two years from the child's date of birth
36 by the husband, or for the purposes of establishing paternity by
37 the presumed father or the child through or by the child's guardian

1 ad litem. As used in this subdivision, “presumed father” has the
2 meaning given in Sections 7611 and 7612.

3 (2) *Notwithstanding paragraph (1), a motion for blood tests*
4 *may be filed by the husband within a reasonable time after he*
5 *becomes aware of facts that lead him to reasonably believe that*
6 *he is not the biological father of the child.*

7 (c) The notice of motion for blood tests under this section may
8 be filed by the mother of the child not later than two years from
9 the child’s date of birth if the child’s biological father has filed an
10 affidavit with the court acknowledging paternity of the child.

11 (d) The notice of motion for blood tests pursuant to this section
12 shall be supported by a declaration under oath submitted by the
13 moving party stating the factual basis for placing the issue of
14 paternity before the court.

15 (e) Subdivision (a) does not apply, and blood tests may not be
16 used to challenge paternity, in any of the following cases:

17 (1) A case that reached final judgment of paternity on or before
18 September 30, 1980.

19 (2) A case coming within Section 7613.

20 (3) A case in which the wife, with the consent of the husband,
21 conceived by means of a surgical procedure.

22 SEC. 3. Section 7570 of the Family Code is amended to read:

23 7570. The Legislature hereby finds and declares as follows:

24 (a) There is a compelling state interest in establishing *biological*
25 *paternity for all children. Establishing paternity is the first step*
26 *toward a child support award, which, in turn, provides children*
27 *with equal rights and access to benefits, including, but not limited*
28 *to, social security, health insurance, survivors’ benefits, military*
29 *benefits, and inheritance rights. Knowledge of family medical*
30 *history is often necessary for correct medical diagnosis and*
31 *treatment. Additionally, knowing one’s biological father*
32 *is important to a child’s development. Additionally, establishing*
33 *paternity for the biological father creates respect for the judicial*
34 *system, while imposing the financial obligation of child support*
35 *on a party who medical evidence has established is not the*
36 *biological father generates disrespect for the courts. Courts are*
37 *inherently limited to establishing financial obligations; they are*
38 *not capable of mandating the maintenance of family relationships.*

39 (b) A simple system allowing for establishment of voluntary
40 paternity will result in a significant increase in the ease of

1 establishing paternity, a significant increase in paternity
2 establishment, an increase in the number of children who have
3 greater access to child support and other benefits, and a significant
4 decrease in the time and money required to establish paternity due
5 to the removal of the need for a lengthy and expensive court
6 process to determine and establish paternity and is in the public
7 interest.

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